IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

Crl.Rev.Pet.No. 950 of 1999()

CRA.231/1997 of ADDL. SESSIONS COURT, THRISSUR
SC.99/1996 of I ADDL. ASSISTANT SESSIONS COURT, THRISSUR

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REVN. PETITIONER: APPELLANT/ACCUSED

KUNHUMUHAMMED
S/O.KOOLLANGAPARAMBIL VEETTIL KUNCHALAN
ANAPPARA, VILVATTAM VILLAGE
THRISSUR DIST.

BY ADV. SRI.P.VIJAYA BHANU

RESPONDENT: RESPONDENT/COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM

BY PUBLIC PROSECUTOR SRI.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.R.P.NO.950/1999

ORDER ON CRL.M.P.NO.4387/99 IN CRL.R.P.NO.950/99

DISMISSED

19.6.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.950 of 1999

Dated this the 19th day of June, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 376 IPC and convicted, as modified by the appellate court, to undergo simple imprisonment for three years and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for six months.

2. The prosecution case is that the accused committed rape on PW1, a girl of less than 16 years of age, on 28.6.1995 at about 10.30 a.m. in her residence at Anapara Silver Jubilee Colony.

3. The evidence adduced in the matter consisted the testimony of PWs' 1 to 10, Exts. P1 to P15 and Mos' 1 to 4. PW1 the defacto complainant/the victim as well as PW2 have testified with respect to the incident. PW3 has deposed that he saw the accused entering the house of the victim and closing the door and as he felt suspicious he followed him and saw the accused in the act and on seeing PW3, the accused fled from the scene of

occurrence. The matter was reported on 30.6.1995 i.e., on the second day of the incident. Of course, the examination of the doctor, PW9, and Ext. P5 certificate of examination did not disclose any injuries on the private parts. The dress of the accused and that of the defacto complainant was sent for chemical analysis. But the report was negative. The evidence of PWs' 1 and 2 did not contain any material discrepancies and no contradictions or omissions with respect to the previous statements. In the circumstances, I find that the evidence as to the incident appears convincing as held by the court below.

4. The contention of the counsel for the revision petitioner is that as per Ext. P7 birth certificate of PW1 her date of birth is mentioned as 4.9.1979 and hence, she would be just aged 3 months less to attain 16 years. It is pointed out that the birth was registered only on 28.5.1984 as evidenced from the birth certificate. PW11, the secretary of the Panchayath, who issued Ext. P7 certificate has deposed that if the birth is registered after one year, sanction of the RDO is required. He has testified that there was RDO's sanction. It is also pointed out

that PW2, the mother, has not mentioned the year of birth as she could not remember the same. I find that she has recollected that the girl was born in the Malayalam month of Chingam in the date of 22nd. All the same, I find that nothing has been brought out to indicate that age mentioned in Ext. P7 is incorrect. Although, evidently there is no resistance, even consent could not help the accused as the girl is aged under 16 years vide sixthly of Section 375 IPC. In the circumstances, I find no reasons to to interfere in the findings of the court below. The prosecution case stands established beyond reasonable doubt.

5. So far as the sentence is concerned, the counsel for the revision petitioner has pleaded for leniency pointing out that the incident has taken place more than ten years back and that so far the accused has been facing the criminal proceedings and he is right now aged 62 years. It is also pointed out that he had undergone pretrial detention for two months. In the circumstances, I find that the sentence is liable to be modified. Sentence is modified to imprisonment already undergone and to pay a fine of Rs.50,000/- and in default, to undergo simple

imprisonment for six months. The fine amount, if realised, shall be paid to PW1, the victim. Revision petitioner is granted three months' time to remit the fine amount. The revision petitioner shall appear before the court below on 20.9.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

csl